Seattle City Attorney's Office

Annual Report 2005

Thomas A. Carr
Seattle City Attorney

TO: The Mayor and the Seattle City Council

Pursuant to Article XXII, section 12 of the Seattle City Charter; I am submitting the Annual Report for the year ending December 31, 2005.

This report displays the breadth and scope of our work on behalf of the City. In 2005, our office was involved in almost every aspect of city government. We assisted policy-makers with difficult issues ranging from the Seattle Art Museum, the Alaskan Way Viaduct, the Downtown Density work plan and the Nightlife Task Force. We were once again one of the busiest prosecuting offices in the state; prosecuting over 12,000 crimes, including over 1500 domestic violence (DV) cases and over 1200 driving under the influence (DUI) of alcohol cases.

We also assisted with the drafting and revising of hundreds of ordinances, including a new pedestrian safety ordinance and a new auto theft ordinance. Our attorneys litigated cases in the Washington Supreme Court, the Ninth Circuit Court of Appeals, the Washington State Court of Appeals and, of course, in various trial courts. The following report provides a brief overview of the outstanding work of some of the best attorneys in Washington State.

Thomas A. Carr Seattle City Attorney

Thomas A. Carr, City Attorney

Robert Hood, Chief, PCS Division Suzanne Skinner, Chief, Civil Division Jack Robinson, Administrator

Assistant City Attorneys

Heather Aman Susan Holm Will Patton Mary Perry Judith Barbour Helaine Honig Eleanore Baxendale Ted Inkley Arlene Ragozin Rebecca Robertson Rebecca Boatright Stephen Karbowski Jean Boler Gary Keese William J. Ross Phil Brenneman Katrina Kelly Tuere Sala Thom Castagna James Kenny Michael Sanders Henry Chae Kevin Kilpatrick Carlton Seu Andrea Chin Margaret Klockars Thomas Sean Sheehan Robert Chung Engel Lee Marya Silvernale Sandra Cohen Jason Logan Jeffery Slayton Kirk Davis Mary Lynch Suzanne Smith Stephanie Dikeakos John R. Mason Derek Smith Darby DuComb Marc Mayo Tamera Soukup Rebecca Earnest William G. McGillin Chris Thomas Angela Tinker Rodney Eng John McGoodwin Rebecca Ernest Edward McKenna Robert Tobin William C. Foster Kent Meyer **Hugh Tobin** Tienney Milnor Anne Vold Barbara Frost Gregory Fuller Robert Murashige Theresa Wagner Beth Gappert Jessica Nadelman Sandy Watson Moses Garcia Cindi Williams Marcia Nelson Jennifer Johnson Grant Judith B. Nevins Robert C. Williams Laura Wishik Richard Greene Kathleen O'Hanlon

Erin Overbey

Sharon Jones Hayden George Haldeman

John Groh

Inger Faraz

Staff

Daniel Okada

Fritz Wollett

Roger Wynne

Neffertiti Thomas

Debby Trudeau

Linda Ve'e

Carol Walker

Jackie Wallace

Jeaneen Watkins

Kathleen Whalen-Burns

Rhana Adams Rhonda Harris Art Oki Patricia Albert Suzanne Hatfield Cary Petty Joyce Ramsey Dana Anderson Bonnie Hershaw Camella Bayer Karen Irish Shawn Richard-Davis Lesia Bouie Tony Irwin Donna Robinson Gloria Brady Marisa Johnson Dick Roth DC Bryan Teresa Jones Renee Saltzgiver Burggraff, Kimberley Jean Xuan Le Viki Servis Ken Carlstedt Holly Smith Linda Lewis Kerin Steele

Erin Castro Cindy Lieuallen Teresa Eidem Romeo Liton Anne Elliott Joanne Luong Kim Fabel Nancy McManigal Kristen McKenna

Lou Foz Peter McNeill Paige Gates Anne Molina Sarinas Yvonne Green Cheryl Mezich

Tori Hamilton Alice Morales Michelle Wills Rose Hailey Ken Molsberry Stan Wojcik Hazel Haralson Theresa Nestor Janette Yamashita

Office Overview

Seattle City Attorney, Thomas A. Carr, is a nonpartisan elected official, serving his second four-your term. Seattle has elected its attorney since 1875. Mr. Carr is the 29th person to serve in this position and is currently serving his second term. Mr. Carr heads the Seattle City's Attorney's Office, which employs 148 people, including 83 attorneys. It is the fourth largest public law office in the State of Washington. The office provides legal advice to City officials to help them achieve their goals, represents the City in litigation, and protects public health, safety, and welfare by prosecuting criminal and civil violations of City ordinances. The office consists of three divisions: Civil, Public & Community Safety, and Administration.

The Civil Division is organized into eight specialized areas of practice. Civil Division attorneys provide legal counsel, as well as representation in litigation at all levels of state and federal courts, and administrative agencies. The practice areas are: Civil Enforcement, Contracts, Employment, Environmental Protection, Land Use, Municipal Law, Torts and Utilities.

The Public & Community Safety Division prosecutes misdemeanors committed in the City of Seattle, provides legal advice to City clients on criminal justice matters, monitors state criminal justice legislation of interest to the City and participates in criminal justice policy development and management of the criminal justice system. In addition, the Division operates the Victim of Crime Program that assists crime victims in obtaining restitution, obtaining information about the progress of their cases and providing information concerning

their rights. The Division also operates an extensive volunteer program through which citizens can provide service to, and gain a better understanding of the criminal justice system.

The Administration Division provides support to the other divisions with clerical, accounting and technological assistance. The technical support staff provides not only routine computer maintenance, but also innovative solutions to reduce costs and increase office efficiency.

The City Attorney's office actively recruits interns and externs from law schools in the Seattle area to assist the assistant city attorneys with legal research. This office strongly believes in giving law students the experience and skills necessary for them to become full-fledged practicing lawyers with on-the-job training.

In 2005, the City Attorney provided on-the-job legal experience for twenty-three (23) legal interns from law schools throughout the country such as: Northeastern University Law School; Tulane Law School; Seattle University; and University of Washington. Legal interns actively participated in prosecuting misdemeanants in Seattle Municipal Court, provided useful legal research for the Environmental, Employment, Municipal and Land Use law sections and participated as part of the trial team in several torts cases. The City Attorney is a strong advocate for legal internships as they represent a win-win opportunity for the office as well as the intern. The City Attorney's Office has hired several former interns into staff positions, once the individuals have passed the Washington State Bar.

The City Attorney is committed to using information technology to increase productivity and reduce costs. This commitment was demonstrated in 2005, by replacing over half of the computers in City Attorney's Office with new equipment running Microsoft's XP operating system. By mid-2006 all the computers in the Office will have been replaced, software upgraded, and new paper-saving printers with duplex capabilities installed.

Civil Division

The Seattle City Attorney's office's has expertise in many specialized areas of law. The City Attorney's office provides prompt, cost-effective and professional legal assistance to City clients without the expense of retaining outside counsel. This policy results in substantial savings to the City's taxpayers, while allowing the City to develop expertise in areas unique to municipal government. In 2005, Civil Division attorneys provided more than 100,000 hours of legal service to the City at a "cost" of \$6.8 million. This same level of service in the private sector would cost more than \$15 million (assuming a conservative market average hourly rate of \$150 per hour). The City's "cost" was less than \$70 per hour.

The Civil Division has been under increasing stress recently. The City's budget grew dramatically in the late 1990s resulting in increased activity and expansion throughout Seattle coupled with increased litigation and increased need for legal guidance, particularly in the areas of land use, contracts, environmental protection and torts. Civil Division lawyers were

involved in many aspects of all these projects from drafting the original levies and ordinances through negotiating the transactions, and where necessary, handling construction claims.

Highlights from each section follow:

Contracts Section

The Contracts Section successfully resolved claims and litigation and provided project advice on various construction projects funded by the "Libraries for All" tax levy, including resolution of the Capitol Hill branch claim. The attorneys in this section worked closely with Seattle Center on the sale of Parking Lot 2 to the Gates Foundation. The attorneys also collaborated with the Parks Department to acquire the Northgate Park and Ride lot from King County. In addition, Contracts section attorneys also successfully mediated the construction claims involving the North Queen Anne Drive Bridge Seismic Retrofit project. The contractor's initial claim was approximately \$1.7 million. After two rounds of mediation, the City was able to settle the claims for \$380,000, on a claim where the City had significant potential exposure.

This section provided significant support to the City's efforts on the Monorail, including taking the lead on indemnity, tax and insurance issues. Contracts section attorneys also provided advice on several issues surrounding the South Lake Union Streetcar project, including preparation of contract documents for the construction of the project, acquisition of streetcars under a City of Portland contract with the manufacturer and successfully negotiating a land swap for the streetcar maintenance facility at no cost to the City.

The attorneys in this section provided the Joint Training Facility project with assistance on claims, change orders, insurance and other legal issues throughout the construction of the project, including the contract impact of the stop work order from the Corp of Engineers arising from environmental issues. The Section also assisted the Safe Harbors Homeless Management Information System project with numerous and complex contracts and related documents with the State, King County, Snohomish County and other entities, including service providers. The City's role in this project is to manage the system that maintains the information relating to individual homeless people in the City and the services being provided to them.

This Section also provided legal advice and drafting assistance to Parks/SDOT for the development of the publicly owned portion of the Olympic Sculpture Park including agreements to fund \$4.2 million of public improvements to the park and Alaskan Way.

The Section has initiated condemnation litigation and provided condemnation advice in support of several City projects including the Mercer/Fairview project, the Fire Levy, SPU's project regarding the expansion of the North and South Transfer Stations and the creation of a new inter-modal facility in the area south of Georgetown, and acquisition of property for parks and open space.

The Section has provided advice and assistance in negotiating several agreements related to South Lake Union Park. The Section provided advice on insurance coverage issues related to two major litigation cases: *Glaser* and *Brown*. The *Brown* matter involved recovery of costs expended by the City prior to the acceptance of the City's tender of the

case to the contractor's insurance carriers and arguing with the contractor's and subcontractor's multiple insurance carriers to obtain coverage and ultimately, settlement of the litigation. The *Glaser* matter involves issues regarding coverage by several of the City's excess liability policies for a multimillion-dollar settlement of a class action lawsuit over temporary employee benefits.

The Section provided advice and negotiation assistance to DoIT for cable television re-franchise negotiations with Comcast. Additionally, the Section provided advice and review to SDOT for a potential gift of the King Street Station to the City by BNSF. The Section continued to provide advice on the North Cascades Environmental Learning Center project, which was finally completed in 2005, and prepared for potential mediation/litigation of claims in excess of \$3.2 million arising out of the project.

Civil Enforcement Section

The Civil Enforcement section is the affirmative litigation and problem-solving arm of the City Attorney's office. The Civil Enforcement section handles a wide range of enforcement duties ranging from civil rights violations to animal control matters. The Civil Enforcement section provided leadership on several important high profile matters. Section attorneys working closely with the Executive and the Council helped draft the new residential noise ordinance. This ordinance is designed to provide an effective solution to late night noise disturbances in single family and multifamily zones in the City. The ordinance applies to frequent, repetitive or continuous noise, emanating from a gathering of more than one person

at a residential property, audible to a person with normal hearing at a distance of 75 feet or more from the property. Section attorneys provided training on enforcing the new ordinance at police evening-shift roll calls at all five police precincts.

Section attorneys and staff work to collect money owed to the City. Section attorneys also provide ongoing legal advice to the City's Office of Civil Rights and litigate discrimination cases before the City's Hearing Examiner and in court.

In addition, this section hires, supervises and trains interns to help with traffic infraction cases in the Seattle Municipal Court. Historically, the City was not represented at the traffic infraction calendar. As a consequence, 41% of the contested infractions were dismissed before a hearing could even be held. Without representation by the City Attorney, attorneys representing commercial drivers and others who wanted to avoid the consequences of a traffic infraction had free reign and could generally guarantee a dismissal to their clients. The belief that was that the revenue lost by dismissing these infractions did not justify the cost of an attorney to prosecute them. Missing in this analysis, however, is the risk to public safety posed by drivers, particularly commercial drivers who effectively place themselves above the law.

In 2005, the City Attorney's office in partnership with the University of Washington School of Law, instituted an internship program, through which law students, under the supervision of supervisory assistant city attorneys, represented the City at contested infraction hearings.

The internship program has made a significant difference by providing a City presence at the traffic infraction calendar. Through this program the infraction dismissal rate dropped

from 41% before the program was instituted to 13%. Consequently, the City's revenue increased by \$63,000 since the internship program was implemented. In addition, through this program the City Attorney's office provided valuable feedback to the police department about their procedures, which led to more effective traffic enforcement. The interns updated all of the certifications for the department's speed detection equipment eliminating the most common cause for dismissal of speeding tickets. Supervising attorneys provided training on the specifications for the various traffic infractions, which reduced dismissals resulting from technical errors made by police officers when writing infractions.

Employment Section

With as many as 15,000 employees, the City of Seattle is one of the largest employers in the greater metropolitan area. As does any large business, the City faces a wide range of employment-related challenges. Employment section attorneys advise City departments on matters relating to discipline, sexual harassment, ADA, job elimination & retraining, and labor negotiations. This preemptive approach frequently serves to head off conflicts that might otherwise result in litigation. When lawsuits are filed, the Employment section provides the City with proactive and cost-effective defense.

The following are a few examples of the Employment Section's cases last year that resulted in substantial monetary savings to the City:

In 2005, the Employment Section attorneys settled a large class action brought by a class of temporary employees. The case was settled for \$11.5 million and substantial

changes in the way the City employs temporary workers. Section attorneys negotiated the settlement, which resolved the claims of nearly 4,000 workers who had been employed by the City from 1996 through the end of 2005. The attorneys in this section won a substantial victory in another potential class action case claiming that the City's long time practice of paying City employees ten days after the end of the pay period violated state regulations. The City convinced the trial judge that the regulation relied on by the plaintiffs only applied to monthly payrolls.

Section attorneys continued to represent City departments in lawsuits, arbitrations and hearings brought by City employees and unions. This Section, like some of the others in the Civil Division also uses the help of interns, who get law school credit for working in our office.

Environmental Protection Section

The imminent settlement with the Muckleshoot Indian Tribe of a wide range of issues is due in large part to the Environmental Protection Section's legal advice and assistance over the past two and a half years. The section also joined forces with the Land Use Section to successfully defend SPU's sockeye hatchery project from attacks on the environmental review process. The section continues to advise many departments regarding contaminated sites, including the Lower Duwamish and the lake area adjacent to Gasworks Park, and to advocate for the City's interests in scientifically based, environmentally protective cleanups.

Land Use Section

One of the most important responsibilities of a city is regulating development. This is carried out through enforcement of zoning, development standards, building and other construction codes, environmental regulations and other ordinances such as landmarks preservation. The attorneys and staff in the Land Use section assisted the Executive in the settlement with Tent City, which had helped to ease civic tensions over this historically contentious encampment.

What follows are some of the Land Use Section's more noteworthy cases:

Litigation Highlights

 Successfully defended the City's height decision on shorelines permit issued for a proposed dry dock and boat storage facility and challenged by the Wallingford

- Community Council before the Shorelines Hearings Board and the subsequent LUPA appeal in superior court. (Wallingford Community Council v. Seattle).
- Successfully defended a companion case against a challenge to a 1953 street vacation in superior court (now on appeal to the Court of Appeals). (Wallingford Community Council v. Seattle).
- Successfully defended the grant of a permit for a rowing club on Waterway 23 before the Court of Appeals. (<u>Northlake Marine works v. City and DNR</u>).
- Successfully defended the City Council's decision to locate new playfields at
 Magnuson Park without requiring that the City consider off-site alternatives in
 its EIS. (Friends of Magnuson Park v. Seattle).
- Successfully defended the City's Declaration of Non-significance for cutting down
 17 trees in Occidental Park before the Hearing Examiner. (Brigman et al. v. Seattle).
- Successfully defended the City's DNS for converting the surface of the Loyal Heights playfields to artificial turf before the Hearing Examiner. (<u>Donnelly, Ruebel</u> et al. v. Parks Dept).
- Successfully defended before the Court of Appeals, Div. I, Superior Court's dismissal of a suit seeking damages for DPD's alleged delay in rendering a permit decision.
- Collected more than \$86,000 in code enforcement settlements and entered judgments that exceed \$225,000.

- Successfully defended before the Court of Appeals, Div. I, DPD's issuance of development permits for First United Methodist Church in downtown Seattle.
 (Friends of First United Methodist Church v. Seattle).
- Successfully defended DPD's grant of conditional use permits and a variance to Seattle Country Day School appeal, as well as the EIS for the project. (Ohannes v. DPD).
- Successfully defended the Supplemental Environmental Impact Statement for the Muckleshoot Fish Hatchery being constructed by SPU. (<u>In re Roz Glasser</u>).
- Successfully defended before the Court of Appeals, Div. I, Superior Court's dismissal of a suit seeking damages for DPD's alleged delay in rendering a permit decision. (Calfas v. Seattle).
- Successfully defended DPD's EIS for the Downtown Code Amendments before the Hearing Examiner.
- Successfully defended before the Hearing Examiner DPD's decision after remand to issue a permit to Bertschi School.

Project Highlights

 Assisted DPD in drafting its updates and revisions to the Critical Areas Ordinance, to meet recent changes in state law, and worked with both the City Council and the Executive to secure passage of the Ordinance.

- Assisted the City in purchasing 19 different easements for the Fremont Bridge
 Approaches Project so that the Fremont Bridge can be rebuilt.
- Assisted DPD in drafting its massive revisions to the Downtown Code, and assisted
 Council in drafting its revisions, and working with both clients to achieve
 comprehensive changes that may have a big effect on the future face of downtown.
- Assisted FFD in drafting a major amendment to the City's relocation assistance code
 that will require relocation assistance for City funded projects, similar to that
 required for projects using federal or state funds.
- Provided advice to Council and the Executive on numerous permitting, SEPA and other issues relating to the Alaska Way Viaduct project.

Municipal Law Section

The Municipal Law section primarily handles matters that arise from the City's role as a government entity. These include advising on and litigating a myriad of constitutional, election law, ethics and finance issues.

Litigation highlights

The Municipals Law Section collected millions of dollars in Business and Occupation and Utility taxes through negotiation and litigation, including a \$700,000 bankruptcy claim in Federal Court in Texas against a hazardous waste collection company, a summary judgment motion against a major automaker for more than \$400,000 (on appeal), and a claim against a bankrupt food supplier for more than \$50,000 in unpaid taxes. The attorneys in this section

also litigated in Superior Court the applicability of the City's utility tax to the cable modem Internet system used by thousands of Seattle residents.

Additionally, the Section successfully defended against a major telephone company's claim that amounts it charged and received from its customers to pay company utility taxes is not taxable income. Court of Appeals upheld the trial court; taxpayer appeal to State Supreme Court is pending on the Sprint PCS case.

The Section litigated disclosure of an internal investigation into allegations against a workplace supervisor and successfully defended the Director of Executive Administration's ability to regulate Seattle's taxicab industry against challenge that the City must maintain the maximum number of taxicab licenses set in 1991. Finally, the Section defended Seattle Center's rules governing conduct of "street performers" against a "free speech" challenge.

Project highlights

Education and Training:

- Trained clients (departments City-wide and new supervisors) on: public records retention/disclosure, open public meetings, permissible financial arrangements with private non-profit agencies, and drafting ordinances.
- Coordinated the City Attorney's In-House Continuing Legal Education program (open to both staff attorneys and clients), including programs on the freedom to marry, street use law, making and preserving the trial court record for appeal, and ethics issues for public attorneys.

- Presented educational programs to government and private lawyers at conferences for municipal attorneys (WSAMA) on the Public Records Disclosure Act and the Open Public Meetings Act.
- Presented educational programs to outside government and private lawyers on public records disclosure and to statewide municipal attorneys' association on Open Public Meetings Act.

Drafted or advised on City legislation and rules including:

- South Lake Union streetcar Local Improvement District (LID) formation.
- Establishing Rules of Conduct for a variety of City facilities and properties, e.g., the Civil Service Commission, the Public Safety Civil Service Commission, Seattle Center, Seattle Dept. of Transportation, Parks and Recreation, and Seattle Public Utilities.
- Ethics and Elections Commission interpretive rule concerning employee and officer acceptance of gifts.
- Amendments to Seattle's false alarm fee ordinance.
- Formation and amendment of Parking and Business Improvement Areas.
- Prohibiting climbing on bridges and other structures.

Advised on and drafted documents to carry out major client projects including:

• City financial guarantee of \$65 million of bonds issued by the Museum Development Authority to build an expanded downtown space for the Seattle Art Museum.

- Seattle Monorail Project negotiations and dissolution.
- 2006 City Budget.
- Olympic Sculpture Park.
- Implementing other capital projects for "Pro Parks 2000" levy.
- Ethics and Elections Commission investigations, enforcement actions, and opinions.
- Numerous "special event" permit situations.
- Cameras in taxicabs.
- Advised Ethics and Elections Commission, Human Rights Commission, Civil Service Commission, Public Safety Civil Service Commission, and Retirement Board on quasi-judicial matters and assisted with drafting decisions.

Torts Section

Seattle, like any government or business, faces a variety of claims for personal injury. The Torts Section is charged with limiting the City's liability for such claims both by improving practices to avoid injury and by defending the City when a lawsuit is filed. 2005 was the City's fourth year operating under the new risk management program adopted in 2001. The Torts Section works closely with the City's Risk Manager, providing risk management consultation and liability analysis for operating departments. This ongoing legal support involves field visits to work units or locations and consultation with managers in departments such as Human Services and Probation. The section's attorneys also work with managers on drafting policies and procedures and controlling or transferring risk exposures.

Effectively defending the City requires recognition that there are times when cases should be settled either because the plaintiff has a legitimate claim and is entitled to compensation, or because the risk of a substantial jury verdict justifies settlement. The Torts Section's philosophy is to settle meritorious claims while vigorously contesting non-meritorious claims.

An example of the litigation work of the Torts section resulted from a catastrophic murder/suicide and subsequent crash of a Metro bus. The bus crashed through the Aurora Bridge guardrail upon which the City has certain maintenance responsibilities. The City was sued by a police officer exposed to AIDS-tainted blood who alleged defects in the Police Department's blood born pathogens program. A bus passenger, who lost an arm and a leg in the crash, also filed suit. The City won a complete defense jury verdict in the police case (*Cowdrey v. Seattle*) and convinced the catastrophically injured plaintiff in the other matter to settle for \$2,000.

Many cases do not even reach a jury. The section prevailed in several significant matters by convincing judges to dismiss the complaints outright. Illustrative cases include: *Skubatch v. Seattle* (serious brain damage traffic engineering/signing case), *Moore v. Seattle* (serious brain damage highway maintenance case), and *Martin v. Seattle* (wrongful death Duwamish drowning case). The *Skubatch* dismissal has been affirmed by the Court of Appeals and been denied review by the Supreme Court. The *Martin* matter is on appeal. The Torts Section emerged victorious and secured defense jury verdicts in numerous other more

routine cases such as *Hunegaw v. City* (police collision property damage/business interruption case).

The section also has been successful in persuading insurance companies to defend the City. In *Stone v. Seattle* (serious brain damage, alleged public facilities operations negligence arising from crowd surfing during a concert at Key Arena) the insurance company not only finally settled the case at no cost to the City, but also wrote the <u>City</u> a check for \$450,000 for costs and attorneys fees.

As a property owner and utility operator throughout Seattle, the City is constantly exposed to claims and lawsuits related to landslides. These cases tend to come in waves caused by periods of sustained rains. Substantial cohorts of such cases were filed against the City after the winter rains and snows of 1996 and 1997. The Torts Section rendered distinguished service to the City on these cases, the signature event being a major landslide on Perkins Lane in which six valuable houses were totally destroyed. The City won dismissal of the resulting lawsuit (*Price v. City*) and the resulting appellate court decision made new law protecting the City from liability for landslides resulting from natural conditions.

The Seattle Police Department often faces lawsuits stemming from the work of its officers, as does any major metropolitan police department. The City handles such claims through the Seattle Police Liability Program, administered through the Torts Section. Since 1990 the City has won defense verdicts in more than 20 jury trials in which police officers were charged with wrongdoing. In that time there has not been a jury verdict against the City or one of its officers.

The 1999 WTO conference spawned a subset of police litigation. Every court has upheld the emergency declarations and emergency order issued during the conference. On December 1, 1999, a federal district judge denied the ACLU's request for emergency relief to dissolve the limited access zone created to protect the conference. Another federal district judge granted the City's motion for summary judgment determining that the zone was constitutionally created and enforced. This ruling is on appeal. The City also has faced lawsuits by numerous individuals who were arrested during WTO. The vast majority of these suits have either been dismissed or settled.

Utilities Section

The utilities section is responsible for diverse matters relating to the management and delivery of water, electricity, waste disposal and recycling in the City, which is unique in its ownership of two public utilities (Seattle City Light, Seattle Public Utilities). Utilities law is highly complex; it involves a unique combination of science, contracts, environmental protection and land use issues. Seattle's utilities affect each and every one of Seattle's citizens.

Here are some of the landmark cases litigated by the Utilities Section in 2005:

Okeson v. Seattle – Ratepayer challenge of the City's 1% for Art program. Court of Appeals upheld the validity of the City's One Percent for Art ordinance, SMC Ch.
 20.32, as applied to SCL, but affirmed the trial court's rulings that art funded by SCL

- must have a sufficiently close nexus to the utility's fundamental purpose of providing electricity to its ratepayers.
- Okeson v. Seattle Ratepayer challenge of City Light's greenhouse gas mitigation program. This Section's attorneys won on summary judgment.
- <u>Burns v. Seattle</u> Ratepayer challenge of City Light's franchise agreements with several suburban cities. Again, our attorneys won on summary judgment.
- <u>Children's Hospital Litigation</u> Successfully negotiated complex settlement wherein Children's agreed to build a new line to carry the existing water flows blocked by its multi-million dollar construction project, dedicate the new line to the City and hold the City harmless for any additional claims made by other parties to the litigation (the professional engineers, surveyors and contractors.
- <u>DuPont GHG Offset Purchase</u> Successfully negotiated a deal to purchase greenhouse gas offsets from DuPont.
- <u>IRIS Utility Relocation</u> Successfully negotiated a major utilities relocation agreement with the Gates Foundation as required by the Gates Foundation's purchase of the Seattle Center's East Parking Lot.
- Olympic Pipe Line Litigation Vigorously argued the case in front of the Ninth
 Circuit; although unsuccessful on the primary issue, the Ninth Circuit specifically
 declared all non-safety aspects of our Franchise Agreement to be binding on
 Olympic.

- <u>Puget Re-conductoring Agreement</u> Successfully negotiated an agreement for Puget Sound Energy to reconductor City Light transmission lines from its Bothell substation in an effort to support and upgrade Puget Sound area transmission facilities for regional transmission issues.
- <u>Cedar River Hatchery Appeal</u> Successfully defended an appeal of the supplemental EIS for the Cedar River Hatchery before the Seattle Hearing Examiner.
- <u>Boundary Dam Relicensing</u> Advised City Light on process of re-licensing Boundary dam.

Public & Community Safety Division

Over the last eight years, Seattle participated in a United States Department of Justice program to increase public safety by providing communities with direct access to prosecutors working out of police precincts. Prosecutors have come to realize that some public safety and neighborhood livability problems can be better addressed through community-oriented problem solving rather than by traditional "case-by-case" prosecution.

In 2005, the PCS division adjusted its business processes to incorporate this new priority. The division re-wrote the Filing and Disposition Standards, engaged in dialogue with the Municipal Court and the Defense bar on alternatives to incarceration and incorporated the existing precinct liaison program into the newly renamed Public & Community Safety (PCS) division.

There is work ahead, but there is much to be proud of in 2005. One big achievement that gained nationwide and federal recognition was new Seattle Municipal Court Community Court.

PCS Highlights:

The Public & Community Safety Division is made up of four work units: two regular trial teams consisting of nineteen attorneys and two paralegals; the Domestic Violence Unit, consisting of six attorneys and eleven victim advocates and a paralegal; the Case Preparation Unit, the Community Prosecution Program consisting of four attorneys; and an Administration Unit.

The regular trial teams handled over 18,000 referrals from the police in 2005, filing over 12,500 criminal misdemeanor charges in Seattle Municipal Court. This was a slight decrease from 2004. Details concerning that workload are as follows:

Overall Workload	1st Q	2nd Q	3rd Q	4th Q	Total
2004 Repts Recd	5301	5136	4485	3985	18907
2005 Repts Recd	4634	4367	4643	4514	18158
2004/2005 Diff.	-667	-769	158	529	-749
% Increase/Decrease	-12.6%	-15.0%	3.5%	13.3%	-4.0%
2004 Cases Filed	3728	3229	3015	2973	12945
2005 Cases Filed	3092	3236	5 2968	3288	12584
2004/2005 Diff.	-636	7	-47	315	-361
% Increase/Decrease	-17.1%	0.2%	-1.6%	10.6%	-2.8%
2004 Jury Trial Settings	573	426	5 553	424	1976
2005 Jury Trial Settings	504	445	5 517	398	1864
2004/2005 Diff.	-69	19	-36	-26	-112
% Increase/Decrease	-12.0%	4.5%	-6.5%	-6.1%	-5.7%

Within that workload, a significant portion of the regular trial teams' work involves the traffic related offenses of DUI and DWLS. In 2005, over 1200 DUI cases were filed, a 10% decrease from the previous year, reflecting a similar 10% decline in DUI case referrals from the police.

Details concerning the DUI workload are as follows:

DUI Workload	1st Q	2nd Q	3rd Q	4th Q	Total
2004 Repts Recd	374	340	321	387	1422
2005 Repts Recd	406	271	242	351	1270
2004/2005 Diff.	32	-69	-79	-36	-152
% Increase/Decrease	8.6%	-20.3%	-24.6%	-9.3%	-10.7%
2004 Cases Filed	361	321	308	370	1360
2005 Cases Filed	369	263	235	354	1221
2004/2005 Diff.	8	-58	-73	-16	-139
DUI Workload	1st Q	2nd Q	3rd Q	4th Q	Total
% Increase/Decrease	2.2%	-18.1%	-23.7%	-4.3%	-10.2%
2004 Jury Trial Settings	121	75	60	51	307
2005 Jury Trial Settings	87	96	86	70	339

2004/2005 Diff. -34 21 26 19 32 % Increase/Decrease -28.1% 28.0% 43.3% 37.3% 10.4%

In May of 2004, the City of Seattle repealed police officer authority to impound the vehicles being driven by a driver suspended for failing to respond to or pay a notice of traffic infraction. Such impoundment authority had significantly reduced the number of such cases being filed, the recidivism rate of such violators, the racial disproportionality of violators, and the jail costs associated with such drivers between 1999 and 2003. The State Supreme Court also temporary reduced this DWLS 3rd Degree portion of this caseload by finding a legal defect in how the Department of Licensing suspends a driver's license. In 2005, nearly 1200 DWLS cases were filed; a 50% decrease from the previous year, reflecting the results of this legal challenge.

Following a hiatus from filing many of these cases due to the court decision and the need for a legislative corrective action, filing of these cases began anew starting in the late Fall of 2005. Cases have grown rapidly since with no end in sight as to how high the eventual caseload may go in 2006 and beyond. Previous to the implementation of impound, the annual DWLS caseload had peaked at nearly 10,000 cases per year in the mid-1990's. Between reinitiating filings and the end of 2005, DWLS cases rose over 100 %. Details concerning the DWLS workload are contained in the following table:

DWLS Workload 1st Q 2nd Q 3rd Q 4th Q YTD*

2004 Repts Recd	1225	1036	241	206	2708
2005 Repts Recd	245	273	292	448	1258
2004/2005 Diff.	-980	-763	51	242	-1450
% Increase/Decrease	-80.0%	-73.6%	21.2%	117.5%	-53.5%
2004 Cases Filed	1191	630	225	194	2240
2005 Cases Filed	226	253	283	445	1207
2004/2005 Diff.	-965	-377	58	251	-1033
% Increase/Decrease	-81.0%	-59.8%	25.8%	129.4%	-46.1%
2004 Jury Trial Settings	119	60	43	25	247
2005 Jury Trial Settings	32	20	28	20	100
2004/2005 Diff.	-87	-40	-15	-5	-147
% Increase/Decrease	-73.1%	-66.7%	-34.9%	-20.0%	-59.5%

In 2005, the Domestic Violence Unit handled over 3800 referrals from the police, filing nearly 1550 domestic violence related cases. Case referrals declined slightly though the number of cases filed increased. Details concerning the Domestic Violence Unit workload are contained in the following table:

DV Workload

	1st Q	2nd Q	3rd Q	4th Q	Total
2004 Repts Recd	1128	1086	969	924	4107
2005 Repts Recd	931	954	1025	910	3820
2004/2005 Diff.	-197	-132	56	-14	-287
% Increase/Decrease	-17.5%	-12.2%	5.8%	-1.5%	-7.0%
2004 Cases Filed	372	387	357	365	1481
2005 Cases Filed	351	396	385	417	1549
2004/2005 Diff.	-21	9	28	52	68
% Increase/Decrease	-5.6%	2.3%	7.8%	14.2%	4.6%
2004 Jury Trial					
Settings	125	103	174	115	517
2005 Jury Trial					
Settings	127	118	122	116	483
2004/2005 Diff.	2	15	-52	1	-34
% Increase/Decrease	1.6%	14.6%	-29.9%	0.9%	-6.6%

Despite these large caseload volumes, the Division continued to maintain a high degree of favorable outcomes in its cases. With slightly over 17, 000 cases resolved in 2005, nearly 15,500, or 90%, were resolved on terms favorable to the City.

Other Division Highlights:

• The Domestic Violence Unit completed its second year of operations under a dedicated domestic violence calendar system in Seattle Municipal Court. All such cases are heard before one of two domestic violence court judges. This innovation has lead to better

accountability over defendants and improved the handling of these important cases.

The Unit also implemented a risk assessment tool to help victim in safety planning and prioritize cases based on victim risk.

- Leveraging the benefits of and experience from a United States Department of Justice grant and a Congressional Earmark, the Precinct Liaison Program now consists of four full-time attorneys working out of the five Seattle Police Precincts. An important benefit of this federal funding was the capability of sending the liaison team to one or more Advanced Community Prosecution workshops held by the American Prosecutor's Research Institute during 2005. The entire team also participated in Northwest Regional Training in Portland, Oregon early in the year. At these workshops, our liaisons were able to learn the latest community problem-solving techniques used to address community quality of life and public safety concerns and to share our approaches and experiences with others. Those sessions also gave the unit an opportunity to cement Seattle's growing reputation as a center for innovative community prosecution initiatives and best practices.
- In the first half of the 2005, the North Precinct Auto Theft Pilot Project combined a proactive public education effort to reduce car theft with a targeted effort to take frequent auto theft offenders off the streets. Over a thousand copies of *Help Stop Car Theft Now*, a brochure containing common sense techniques to avoid becoming a car theft victim, were distributed as part of the North Precinct's 2005 *Night Out* ¹ event and

¹ National Night Out Against Crime is an annual anti-crime event that is designed to heighten crime prevention awareness, increase neighborhood support in anti-crime efforts, and unite communities.

PowerPoint presentations were made to a number of north end community groups.

During the course of the yearlong pilot, over 30 defendants were charged, convicted, and sentenced to nearly 2,500 days in jail. The effort is credited with helping to reduce auto theft in the North Precinct.

- During the course of 2005, several more Good Neighborhood Agreements were negotiated with liquor licensees in the Fremont entertainment district. Standardized agreements were signed with new and existing establishments in the hopes of helping them avoid becoming public safety and community livability problem. Despite a rapid increase in the number and capacities of such businesses in Fremont, actual calls for police service to the area have gone down.
- In March of 2005, a partnership between the Municipal Court, the City Attorney, and the Public Defender agency led to the creation of the Seattle Municipal Court Community Court Pilot Project. This specialized court calendar within Seattle Municipal Court, is designed to deal with low risk defendants who commit quality of life offenses by requiring them to make social services contacts and do community service in lieu of short jail terms. The 26th such community court in the country; this development places Seattle at the forefront of the growing community court movement. Later in 2005, the City Attorney's Office was awarded one of ten \$200,000 United States Department of Justice grants available under the *Community Involved Justice Initiatives* grant program to significantly expand the Seattle Community Court.

Working in partnership with the Department of Information Technology, the Seattle Police Department, Seattle Fire Department, and Seattle Municipal Court, the PSC continued to press forward with criminal justice system data integration. Leverages resources made possible by two United States Department of Justice grants, the project is moving forward on phase 2 of SEAJIS, which will complete electronic case initiation for in custody defendants and enable real time data exchanges with the King County Jail Booking System.